

1 ELIZABETH DAY (SBN 177125)
 eday@feinday.com
 2 MARC BELLOLI (SBN 244290)
 mbelloli@feinday.com
 3 DAVID ALBERTI (SBN 220625)
 dalberti@feinday.com
 4 **FEINBERG DAY ALBERTI &
 THOMPSON LLP**
 1600 El Camino Real, Suite 280
 6 Menlo Park, CA 94025
 Tel: 650.618.4360
 7 Fax: 650.618.4368

8 CABRACH J. CONNOR
 Texas Bar No. 24036390 (*pro hac vice*)
 cab@connorkudlaclee.com
 10 JENNIFER TATUM LEE
 Texas Bar No. 24046950 (*pro hac vice*)
 11 jennifer@connorkudlaclee.com
 12 **CONNOR KUDLAC LEE PLLC**
 609 Castle Ridge Road, Suite 450
 13 Austin, TX 78746
 Telephone: 512.777.1254
 14 Facsimile: 888.387.1134

15 *Attorneys for Plaintiff Blue Sky Networks, LLC*

CAROLYN CHANG (217933)
 carolyn@martonribera.com
 HECTOR J. RIBERA (221511)
 hector@martonribera.com
 DAVID D. SCHUMANN (223936)
 david@martonribera.com
 RYAN J. MARTON (223979)
 ryan@martonribera.com
**MARTON RIBERA
 SCHUMANN & CHANG LLP**
 548 Market Street, Suite 36117
 San Francisco, CA 94104
 Tel.: (415) 360-2511

Attorneys for Defendant VeriFone Systems, Inc.

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **OAKLAND DIVISION**

20 BLUE SKY NETWORKS, LLC.
 21 Plaintiff,
 22 v.
 23 VERIFONE SYSTEMS, INC.
 24 Defendant.

Case No: 4:17-CV-6567-YGR

STIPULATED PROTECTIVE ORDER
 as modified by the Court

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for any
4 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to
5 and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this
6 Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it
7 affords from public disclosure and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in
9 Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information
10 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
11 applied when a party seeks permission from the court to file material under seal.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
14 items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
16 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
17 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their
19 support staff).

20 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL
21 – ATTORNEYS’ EYES ONLY” information in this matter.

22 2.5 Designating Party: a Party or Non-Party that designates information or items that it produces
23 in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
26 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
27 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.
28

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in
3 this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time of
4 retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

5 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
6 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
7 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

8 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely sensitive
9 “Confidential Information or Items” representing computer code and associated comments and revision
10 histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the
11 algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party
12 would create a substantial risk of serious harm that could not be avoided by
13 less restrictive means.

14 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does not
15 include Outside Counsel of Record or any other outside counsel.

16 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
17 named as a Party to this action.

18 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
19 retained to represent or advise a party to this action and have appeared in this action on behalf of that party or
20 are affiliated with a law firm which has appeared on behalf of that party.

21 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
22 retained experts, and Outside Counsel of Record (and their support staffs).

23 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this
24 action.

25 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
26 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
27 retrieving data in any form or medium) and their employees and subcontractors.
28

1 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY
3 CONFIDENTIAL – SOURCE CODE.”

4 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
5 Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as defined
8 above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
9 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by
10 Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this
11 Stipulation and Order do not cover the following information: (a) any information that is in the public domain
12 at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
13 Receiving Party as a result of publication not involving a violation of this Order, including
14 becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving
15 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
16 obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use
17 of Protected Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
20 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.
21 Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with
22 or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals,
23 rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or
24 applications for extension of time pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
27 Party that designates information or items for protection under this Order must take care to limit any such
28

1 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do
2 so, the Designating Party must designate for protection only those parts of material, documents, items, or oral
3 or written communications that qualify – so that other portions of the material, documents, items, or
4 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
5 Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
7 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard
8 the case development process or to impose unnecessary expenses and burdens on other parties) expose the
9 Designating Party to sanctions.

10 If it comes to a Designating Party’s attention that information or items that it designated for protection
11 do not qualify for protection at all or do not qualify for the level of protection initially asserted, that
12 Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
14 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

15 Material that qualifies for protection under this Order must be clearly so designated before the material
16 is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
19 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
21 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
22 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,
24 the level of protection being asserted.
25

26 A Party or Non-Party that makes original documents or materials available for inspection need not
27 designate them for protection until after the inspecting Party has indicated which material it would like copied
28 and produced. During the inspection and before the designation, all of the material made available for

1 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
2 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
3 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
4 producing the specified documents, the Producing Party must affix the appropriate legend
5 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
6 CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion or
7 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
8 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,
9 the level of protection being asserted.

10 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
11 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
12 protected testimony and specify the level of protection being asserted. When it is impractical to identify
13 separately each portion of testimony that is entitled to protection and it appears that substantial portions of the
14 testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition,
15 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the
16 testimony as to which protection is sought and to specify the level of protection being asserted. Only those
17 portions of the testimony that are appropriately designated for protection within the 21 days shall be covered
18 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the
19 deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be
20 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
21 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

22
23 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
24 proceeding to include Protected Material so that the other parties can ensure that only authorized individuals
25 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
26 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ” or “HIGHLY
28 CONFIDENTIAL – SOURCE CODE.”

1 Transcripts containing Protected Material shall have an obvious legend on the title page that the
2 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line
3 numbers as appropriate) that have been designated as Protected Material and the level of protection being
4 asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements.
5 Any transcript that is prepared before the expiration of a 21-day period for designation shall be treated during
6 that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
7 entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as
8 actually designated.

9 (c) for information produced in some form other than documentary and for any other tangible
10 items, that the Producing Party affix in a prominent place on the exterior of the container or containers in
11 which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or
13 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall
14 identify the protected portion(s) and specify the level of protection being asserted.

15
16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
17 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
18 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
19 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality
23 at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to
24 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of
25 the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to
26 mount a challenge promptly after the original designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
28 providing written notice of each designation it is challenging and describing the basis for each challenge. To

1 avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to
2 confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties
3 shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in
4 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service
5 of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality
6 designation was not proper and must give the Designating Party an opportunity to review the designated
7 material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
8 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it
9 has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to
10 participate in the meet and confer process in a timely manner.

11 6.3 Judicial Intervention. **If the Parties cannot resolve a challenge without court intervention,**
12 **the parties shall follow the Court's Standing Order in Civil Cases regarding Discovery and Discovery**
13 **Motions. The parties may file a joint letter brief regarding retaining confidentiality within 21 days of**
14 **the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process**
15 **will not resolve their dispute, whichever is earlier. Failure by a Designating Party to file such discovery**
16 **dispute letter within the applicable 21 or 14 day period (set forth above) with the Court shall**
17 **automatically waive the confidentiality designation for each challenged designation. If, after submitting**
18 **a joint letter brief, the Court allows that a motion may be filed, any such motion must be accompanied**
19 **by a competent declaration affirming that the movant has complied with the meet and confer**
20 **requirements imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer**
21 **the discovery matter to a Magistrate Judge.**

22 **In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality**
23 **designation at any time if there is good cause for doing so, including a challenge to the designation of a**
24 **deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court allows**
25 **that a motion may be filed, any motion brought pursuant to this provision must be accompanied by a**
26 **competent declaration affirming that the movant has complied with the meet and confer requirements**
27
28

1 imposed by the preceding paragraph. The Court, in its discretion, may elect to refer the discovery
2 matter to a Magistrate Judge.

3 **The burden of persuasion in any such challenge proceeding shall be on the Designating Party.**
4 **Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary**
5 **expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the**
6 **Designating Party has waived the confidentiality designation by failing to file a letter brief to retain**
7 **confidentiality as described above, all parties shall continue to afford the material in question the level**
8 **of protection to which it is entitled under the Producing Party’s designation until the court rules on the**
9 **challenge.**

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced
12 by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting
13 to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under
14 the conditions described in this Order. When the litigation has been terminated, a Receiving Party must
15 comply with the provisions of section 15 below (FINAL DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
17 manner that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
19 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item
20 designated “CONFIDENTIAL” only to:

21 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
22 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
24 Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
26 whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and
27 Agreement to Be Bound” (Exhibit A);
28

1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
2 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and Professional
6 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
10 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony
11 or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and
12 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

13 (g) the author or recipient of a document containing the information or a custodian or other
14 person who otherwise possessed or knew the information.

15 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
16 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
17 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY” only to:

19 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
20 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
21 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
22 Exhibit A;

23 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
24 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has
25 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures
26 set forth in paragraph 7.4(a)(1), below, have been followed;
27
28

1 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
2 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to
3 whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and Professional
6 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

8 (f) the author or recipient of a document containing the information or a custodian or other
9 person who otherwise possessed or knew the information.

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

12 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
13 a Party that seeks to disclose to Designated House Counsel any information or item that has been designated
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
15 written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and
16 the city and state of his or her residence, and (2) describes the Designated House Counsel’s current and
17 reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House
18 Counsel is involved, or may become involved, in any competitive decision-making.

19 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
20 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
21 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first
22 must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to
24 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary
25 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s),
26 (5) identifies each person or entity from whom the Expert has received compensation or funding for work in
27 his or her areas of expertise or to whom the expert has provided professional services, including in connection
28

1 with a litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of the
2 case, filing date, and location of court) any litigation in connection with which the Expert has offered expert
3 testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding
4 five years.

5 (b) A Party that makes a request and provides the information specified in the preceding
6 respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel
7 or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the
8 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the Designating
10 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of
11 the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated
12 House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
13 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
14 describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated
15 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,
16 and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be
17 accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e.,
18 the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the
19 Designating Party for its refusal to approve the disclosure.
20

21 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert
22 shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards
23 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House
24 Counsel or Expert.

27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
28 should provide whatever information the Expert believes can be disclosed without violating any confidentiality
agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
Party regarding any such engagement.

1 8. PROSECUTION BAR

2 Absent written consent from the Producing Party, any individual who receives access to Verifone
3 System, Inc.'s "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL
4 – SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications
5 relating to short range wireless communication technology, including without limitation the patents asserted in
6 this action and any patent or application claiming priority to or otherwise related to the patents asserted in this
7 action, before any foreign or domestic agency, including the United States Patent and Trademark Office ("the
8 Patent Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
9 amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt,
10 "prosecution" as used in this paragraph does not include representing a party challenging a patent before a
11 domestic or foreign agency (including, but not limited to, port grant reviews, *inter partes* reviews, reissue
12 protests, reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to
13 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
14 CODE" information is first received by the affected individual and shall end two (2) years after final
15 termination of this action.

16 9. SOURCE CODE

17 (a) To the extent production of source code becomes necessary in this case, a Producing
18 Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it comprises or
19 includes confidential, proprietary or trade secret source code.

20 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"
21 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
22 ONLY" information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the
23 individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be
24 disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

25 (c) Any source code produced in discovery shall be made available for inspection, in a
26 format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually
27 agreeable times, at an office of the Producing Party's counsel or another mutually agreed upon location. The
28

1 source code shall be made available for inspection on a secured computer in a secured room without Internet
2 access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise
3 transfer any portion of the source code onto any recordable media or recordable device. The Producing Party
4 may visually monitor the activities of the Receiving Party's representatives during any source code review, but
5 only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

6 (d) The Receiving Party may request paper copies of limited portions of source code that
7 are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for
8 deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other than
9 electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all such
10 source code in paper form including bates numbers and the label "HIGHLY CONFIDENTIAL - SOURCE
11 CODE." The Producing Party may challenge the amount of source code requested in hard copy form pursuant
12 to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
13 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute resolution.

14 (e) The Receiving Party shall maintain a record of any individual who has inspected any
15 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of
16 any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any
17 electronic or other images of the paper copies and shall not convert any of the information contained in the
18 paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such
19 additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying
20 expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case.
21 Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and
22 must not be given to or left with a court reporter or any other unauthorized individual.

23
24 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure
26 of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
27 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party must:
28

1 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
2 the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
4 litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order.
5 Such notification shall include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
7 Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court
9 order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
11 before a determination by the court from which the subpoena or order issued, unless the Party has obtained the
12 Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
13 protection in that court of its confidential material – and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

15
16 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
17 LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-Party in this
19 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in
21 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these
22 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
24 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party
25 not to produce the Non-Party’s confidential information, then the Party shall:

26 1. promptly notify in writing the Requesting Party and the Non-Party that some
27 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

1 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
2 modification by the court in the future.

3 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party
4 waives any right it otherwise would have to object to disclosing or producing any information or item on any
5 ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any
6 ground to use in evidence of any of the material covered by this Protective Order.

7 14.3 Filing Protected Material. Without written permission from the Designating Party or a court
8 order secured after appropriate notice to all interested persons, a Party may not file in the public record in this
9 action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with
10 Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing
11 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will
12 issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade
13 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
14 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may
15 file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
16 instructed by the court.

17
18 15. FINAL DISPOSITION

19 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
20 Party must return all Protected Material to the Producing Party or destroy such material. As used in this
21 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other
22 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or
23 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same
24 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
26 has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing
27 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
28 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,

1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
2 even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected
3 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 Dated: March 9, 2018

Respectfully submitted,

By /s/ Marc Belloli

Marc Belloli

8 **FEINBERG DAY ALBERTI & THOMPSON LLP**

Marc Belloli

mbelloli@feinday.com

1600 El Camino Real, Suite 280

Menlo Park, CA 94025

Telephone: 650 618-4360

Facsimile: 650 618-4368

12 **CABRACH J. CONNOR**

Texas Bar No. 24036390 (*pro hac vice*)

cab@connorkudlaclee.com

14 **JENNIFER TATUM LEE**

Texas Bar No. 24046950 (*pro hac vice*)

jennifer@connorkudlaclee.com

16 **CONNOR KUDLAC LEE PLLC**

609 Castle Ridge Road, Suite 450

Austin, TX 78746

Telephone: 512.777.1254

Facsimile: 888.387.1134

19 *Attorneys for Plaintiff*

Blue Sky Networks, LLC

21 **MARTON RIBERA SCHUMANN & CHANG LLP**

22 By: /s/ Ryan J. Marton

Ryan J. Marton

24 RYAN J. MARTON (SBN 223979)

ryan@martonribera.com

MARTON RIBERA SCHUMANN & CHANG LLP

548 Market Street, Suite 36117

San Francisco, CA 94104

Telephone: (415) 360-2515

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATED: March 16, 2018



3 Yvonne Gonzalez Rogers

4 United States District Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____ [print or type
5 full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Northern District of California on
7 [date] in the case of Blue Sky Networks, LLC v. VeriFone, Systems, Inc., 4:17-cv-6567-YGR. I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
10 I solemnly promise that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this
12 Order.

13
14 I further agree to submit to the jurisdiction of the United States District Court for the Northern District
15 of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
16 enforcement proceedings occur after termination of this action.

17 I hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and telephone number] as my
19 California agent for service of process in connection with this action or any proceedings related to enforcement
20 of this Stipulated Protective Order.

21
22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____
27
28